

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 7222 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI and
MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ORIENTAL INSURANCE CO LTD

Versus

KANUBHAI AMBALAL KACHHIA

Appearance:

MR ARUN H MEHTA for appellant

MR HARIN P RAVAL for Respondent No. 1

CORAM : MR.JUSTICE S.M.SONI and
MR.JUSTICE H.R.SHELAT

Date of decision: 30/01/97

ORAL JUDGEMENT (Per Soni J.)

Learned Advocate Mr.A.H.Mehta for the appellant seeks for permission to delete respondents Nos.2 and 3, who are orig. opponents being owner and driver of the vehicle. Permission to delete granted.

Admit.

Learned Advocate Mr.H. P. Raval appears for

respondent no.1 - orig. claimant. With the consent of parties' learned Advocates, the appeal is taken up for final hearing today. With the consent of parties' learned Advocates, we are not entering into the merits of the case except in the amount of compensation.

Learned Advocate for the appellant has brought to our notice certain inconsistencies and anomalies in the order in view of Second Schedule under sec.163-A of the Motor Motor Vehicles Act, 1988. Against the claim of Rs.3,11,840/-, the amount awarded by the Tribunal is Rs.83,200/-. To arrive at that amount of Rs.83,200/-, the Tribunal has considered the dependency benefit of Rs.25200/- for three years and Rs.28,000/- for 10 years. The Tribunal has also awarded Rs.20,000/- towards loss of expectation of life; Rs.5000/- towards post-death rituals and Rs.5000/- for loss of deceased, being the only child.

Learned Advocate for the appellant objects to the award for loss of expectation of life and award for loss for the only child being lost. The learned Advocate for the appellant has objected to calculation of dependency benefit in two phases, namely, first 3 years at 2/3rd of the income and other 10 years at 1/3rd of the income. In view of the amendment in the Motor Vehicles Act, 1988, second schedule came to be introduced under sec.163-A of the Act, which has only a guiding feature as per the judgment of the Supreme Court in the case of U.P. State Road Transport Corporation vs. Trilok Chandra & Ors. (1996 (2) GLH p.11). Pointing at certain defects in the Schedule, Supreme Court has held :

"To put it briefly, the table abounds in such mistakes. Neither the Tribunals nor the courts can go by the ready reckoner. It can only be used as a guide. Besides, the selection of multiplier cannot in all cases be solely dependent on the age of the deceased. What we propose to emphasise is that the multiplier cannot exceed 18 years' purchase factor. This is the improvement over the earlier position that ordinarily it should not exceed 16. We thought it necessary to state the correct legal position as Courts and Tribunals are using higher multiplier as in the present case where the Tribunal used the multiplier of 24 which the High Court raised to 34, thereby showing lack of awareness of the background of the multiplier system in Davies' case."

Keeping in mind, we now consider whether the income of the deceased, multiplier of purchase given and certain other amounts awarded are proper or not.

As per the evidence on record, deceased had no vices and was quite healthy one. He had completed the

Certificate Course of Motor Mechanic and was working in the workshop under the Deputy Engineer at Rajpipla and was earning Rs.16/- per day. The date of accident is 12.5.85. Keeping in view the fast development in transportation and in particular in the motor mechanism, the learned Tribunal has held that the present (on the day of the judgment) minimum wage is of Rs.45/- per day. The Tribunal has held that the deceased would have earned Rs.30/-per day. We, however, hold that the deceased would have earned Rs.45/- per day in future and for calculating the dependency benefit, Rs.30/- per day i.e. Rs.900/- p.m.

The Tribunal has calculated the dependency benefit in two phases, one before marriage and other after marriage. In our opinion, this spilt up is not warranted. Apart from this, on giving such spilt up, the Tribunal has given the multiplier of only 13, which, in our opinion, is on a very lower side. Even taking the Second Schedule as a guiding factor, then also the claimants were entitled to a multiplier of 17. In our opinion, the multiplier of 17 should be given in the instant case. Instead of calculating dependency benefit in two phases, namely, before marriage and after marriage, it should be considered straightaway on the basis of parents being entitled to 1/3rd of the future income as dependency benefit. Award as to dependency benefit, in our opinion, would also include the loss of expectation of life and no separate amount under the head of loss of expectation of life is required to be awarded. The claimants are also not entitled to compensation for the loss of only child. However, the claimants are entitled to general damages as shown in para 3 of the Second Schedule, which we assess it to be Rs.20,000/-, which covers the heads mentioned in above para 3.

Calculating the dependency benefit at Rs.900/- p.m., it would come to Rs.10,800/- per annum. Applying the multiplier of 17, it would come to Rs.1,73,600/- and the claimants - parents would be entitled to 1/3rd of the same. Said amount comes to Rs.57,860/-. Adding the amount of Rs.20,000/- given as per para 3 of the Second Schedule, the amount comes to Rs.77,860/-. The Tribunal has awarded Rs.83,200/-. So, the difference of amount between the amount awarded by the Tribunal and the amount arrived at by us is only Rs.5340/-. In our opinion, this difference is such that this court should not interfere with the award passed by the Tribunal.

Main grievance of the learned Advocate for the appellant was about wrong principle applied by the Tribunal. As we have corrected the same in the above discussion, we do not propose to interfere with the award passed by the Tribunal.

In the result, the appeal fails and is dismissed.
However, there shall be no order as to costs.

The amount of Rs.25,000/- deposited in this court
at the time of filing of this appeal is ordered to be
transmitted to the Tribunal. The appellant is directed
to pay the remaining amount in the Tribunal within six
weeks from today. On the amount being deposited, the
Tribunal may pass disbursement order.
